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Opinion No. CV 78-119—April 18, 1979

**SUBJECT: NEW SCHOOL CONSTRUCTION**—Under the provisions of article XIII A of the California Constitution, school districts may continue to fund new school construction through the use of voter approved bonds and lease-purchase agreements if the indebtedness was approved by the voters prior to July 1, 1978.

**Requested by: COUNTY COUNSEL, STANISLAUS COUNTY**

**Opinion by: GEORGE DEUKMEJIAN, Attorney General**

Rodney Lilyquist, Jr., Deputy

The Honorable Gilbert W. Boyne, County Counsel of Stanislaus County, has requested an opinion on several questions that can be summarized as follows:

In light of the provisions of article XIII A of the California Constitution, may school districts continue to fund new school construction through the use of voter approved bonds and lease-purchase agreements?

The conclusion is:

Under the provisions of article XIII A of the California Constitution, school districts may continue to fund new school construction through the use of voter approved bonds and lease-purchase agreements if the indebtedness was approved by the voters prior to July 1, 1978.

#### ANALYSIS

The usual method of funding new school construction in California has been for school districts to obtain voter approval for the issuance of general obligation bonds. (See Ed. Code, §§ 15100, 15124.)<sup>1</sup> The bonds are repaid by an annual levy of an ad valorem tax on real (and certain personal) property located within the area of the district. (See §§ 15250, 15252; Rev. & Tax. Code, §§ 104, 201-232, 401, 2151; *Otis v. Los Angeles* (1937) 9 Cal. 2d 366, 372.)

A school district may also obtain funds from the state under a variety of programs for new school construction. Again, however, obtaining the funds must first be approved by the voters, and the funds are repaid by an annual levy of an ad valorem tax on real (and certain personal) property located in the district. (See §§ 15527, 15576, 15742, 16090, 16204, 16214.)

A recent alternative for constructing new school facilities has been the use of "lease-purchase agreements." (See §§ 39300-39305, 81300-81354.) As with the other construction funding methods, voter approval is required and the levy of an annual ad valorem tax on real (and certain personal) property located within the district is necessary to pay for the lease obligations. (See §§ 39308, 39311, 81338, 81341.)

Hence, the funding for new school construction has been dependent upon the school district's ability to levy an ad valorem tax on real property to repay the indebtedness. Such ability, however, was significantly affected by the recent amendment, article XIII A, to the California Constitution. Subdivision (a) of section 1 of the new article provides:

"The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property.

The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties."

Accordingly, the traditional source of revenue for the funding of new school construction has been severely restricted by the provisions of subdivision (a) of section 1. No longer may a school district automatically rely upon a vote of the people to increase ad valorem taxes on real property for the repayment of funds necessary for such construction.

<sup>1</sup> All unidentified section references hereinafter refer to the Education Code.

The Legislature has implemented the mandate of the new constitutional article by limiting the ability of all local governments to levy an ad valorem tax on real property. In general, a school district may only receive an allocation, based upon a specific statutory formula, of the total county tax levy, which itself is limited to the one percent constitutional provision. (See Rev. & Tax Code, § 2237; Gov. Code, § 26912; *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal. 3d 208, 246-247.)

School districts are thus constitutionally and statutorily prohibited in general from increasing the ad valorem tax on real property located within their areas so as to specifically provide for the repayment of funds required for new school construction. This significant restriction and implementing allocation procedure thus effectively prohibit the traditional methods of funding new school construction in California under existing statutory schemes.

However, an important exception does exist under the new constitutional amendment that allows school districts to fund new construction by increasing the tax rate above the one percent limitation. Subdivision (b) of section 1 of article XIII A provides:

"The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any indebtedness approved by the voters prior to the time this section becomes effective."

Subdivision (b) was intended to avoid the retroactive cancellation of voter approved obligations. (61 Ops. Cal. Atty. Gen. 373, 377 (1978).) Accordingly, if voters have approved the indebtedness for new school construction under any of the methods of funding, and such approval occurred prior to July 1, 1978,<sup>2</sup> the construction can be financed by a specific ad valorem tax on real property that exceeds the one percent limitation. In implementing this provision of article XIII A, the Legislature has authorized such an additional tax levy. (Rev. & Tax. Code, § 2237, subd. (a).)

We also note that the Legislature could authorize school districts to fund new construction by levying a type of tax that is different from an ad valorem tax on real property. Section 21 of article XIII provides in part:

"... the Legislature shall provide for an annual levy by county governing bodies of school district taxes sufficient to produce annual revenues for each district that the district's board determines are required for its schools and district functions."

Hence, the possibility exists that a new type of tax may be the source of funds for school construction, depending upon further legislative implementation

<sup>2</sup> The new article was approved by the voters on June 6, 1978, and section 1 thereof became effective "for the tax year beginning on July 1 following ... passage. ..." (Cal. Const., art. XIII A, § 5.)

of articles XIII and XIII A. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, *supra*, 22 Cal. 3d 208, 240.)

The conclusion to the question presented, therefore, is that under the provisions of article XIII A of the California Constitution, school districts may continue to fund new school construction through the use of voter approved bonds and lease-purchase agreements if the indebtedness was approved by the voters prior to July 1, 1978.

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